

CERCLA Financial Assurance Financial Test: Sample CFO Letter (for Test Alternative 1)

[PRP Letterhead]

[Address Block] [Date]

Dear [_____]:

I am the chief financial officer of [name and address of PRP] (the "Company"). This letter is in support of the Company's use of a financial test to demonstrate financial assurance for the obligations of the Company under that certain [Consent Decree (the "Consent Decree")], dated _____, _____, Docket No. [_____], between the PRP and EPA, entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. ("CERCLA"). This letter confirms the Company's satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to utilize the financial test as financial assurance under the Consent Decree.

[Fill out the following five paragraphs regarding CERCLA settlements, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write "None" in the space indicated. For each settlement and facility, include its settlement Docket No. or EPA Identification Number, as the case may be, and the financial assurance dollar amount associated with such settlement and/or facility.]

1. The dollar amount of financial assurance required by Paragraph [____] of the Consent Decree and covered by the Company's use of the financial test is [\$_____].
2. The Company is a signatory to the following CERCLA settlements (other than the Consent Decree) under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$_____], and is shown for each such settlement as follows:
 3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance through a financial test, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities

under 40 CFR part 144, Underground Storage Tank (“UST”) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (“PCB”) storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$_____], and is shown for each such facility as follows:

4. The Company guarantees the CERCLA settlement obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties. The total dollar amount of such CERCLA settlement and regulated facility obligations so guaranteed is equal, in the aggregate, to [\$_____], and is shown for each such settlement and/or facility as follows:
5. The Company [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (“SEC”) for the Company’s latest fiscal year.
6. The Company’s fiscal year ends on [month, day]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company’s independently audited, year-end financial statements for its latest completed fiscal year, ended [date], and further certify as follows:
 - A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals [\$_____].
 - *B. Company’s total liabilities equal [if any portion of the aggregate dollar amount from line A is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines C and D]: [\$_____]
 - *C. Company’s tangible net worth equals: [\$_____]
 - *D. Company’s net worth equals: [\$_____]
 - *E. Company’s current assets equal: [\$_____]
 - *F. Company’s current liabilities equal: [\$_____]
 - G. Company’s net working capital [line E minus line F] equals: [\$_____]
 - *H. Sum of Company’s net income plus depreciation, depletion, and amortization equals: [\$_____]
 - *I. Company’s total assets in the U.S. equal (required only if less than 90% of Company’s assets are located in the U.S.): [\$_____]
 - J. Is line C at least \$10 million? (Yes/No): [_____]

K. Is line C at least 6 times line A? (Yes/No): [_____]

L. Is line G at least 6 times line A? (Yes/No): [_____]

*M. Are at least 90% of Company's assets located in the U.S.? (Yes/No): [_____] If
"No," complete line N.

N. Is line I at least 6 times line A? (Yes/No): [_____]

O. Is line B divided by line D less than 2.0? (Yes/No): [_____]

P. Is line H divided by line B greater than 0.1? (Yes/No): [_____]

Q. Is line E divided by line F greater than 1.5? (Yes/No): [_____]

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

_____ [Signature]

_____ [Name]

_____ [Title]

_____ [Date]

[NOTARY BLOCK] _____

CERCLA Financial Assurance Financial Test: Sample CFO Letter (for Test Alternative 2)

[PRP Letterhead]

[Address Block] [Date]

Dear [_____]:

I am the chief financial officer of [name and address of PRP] (the "Company"). This letter is in support of the Company's use of a financial test to demonstrate financial assurance for the obligations of the Company under that certain [Consent Decree (the "Consent Decree")], dated _____, _____, Docket No. [_____], between the PRP and EPA, entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. ("CERCLA"). This letter confirms the Company's satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to utilize the financial test as financial assurance under the Consent Decree.

[Fill out the following five paragraphs regarding CERCLA settlements, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write "None" in the space indicated. For each settlement and facility, include its settlement Docket No. or EPA Identification Number, as the case may be, and the financial assurance dollar amount associated with such settlement and/or facility.]

1. The dollar amount of financial assurance required by Paragraph [____] of the Consent Decree and covered by the Company's use of the financial test [\$_____].
2. The Company is a signatory to the following CERCLA settlements (other than the Consent Decree) under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$_____], and is shown for each such settlement as follows:
3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance through a financial test, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under

40 CFR parts 264 and 265, Municipal Solid Waste Landfill (“MSWLF”) facilities under 40 CFR part 258, Underground Injection Control (“UIC”) facilities under 40 CFR part 144, Underground Storage Tank (“UST”) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (“PCB”) storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$____], and is shown for each such facility as follows:

4. The Company guarantees the CERCLA settlement obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties. The total dollar amount of such CERCLA settlement and regulated facility obligations so guaranteed is equal, in the aggregate, to [\$____], and is shown for each such settlement and/or facility as follows

5. The Company [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (“SEC”) for the Company’s latest fiscal year.

6. The Company’s fiscal year ends on [month, day]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company’s independently audited, year-end financial statements for its latest completed fiscal year, ended [date], and further certify as follows:

A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals [\$____].

B. The current rating of the Company’s senior unsecured debt is [AAA, AA, A, or BBB] as issued by Standard and Poor’s [-or- [Aaa, Aa, A or Baa] as issued by Moody’s Investor Services].

*C. Company’s tangible net worth equals: [\$____]

*D. Company’s total assets in the U.S. equal (required only if less than 90% of Company’s assets are located in the U.S.): [\$____]

E. Is line C at least 6 times line A? (Yes/No): [____]

F. Is line C at least \$10 million? (Yes/No): [____]

G. Are at least 90% of Company’s assets located in the U.S.? (Yes/No): [____] If “No,” complete line H.

H. Is line D at least 6 times line A? (Yes/No): [____]

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

_____ [Signature]

_____ [Name]

_____ [Title]

_____ [Date]

[NOTARY BLOCK]

CERCLA Financial Assurance Financial Test: Sample CPA Report (for Test Alternative 1)

[CPA Letterhead]

Independent Accountants' Report on Applying Agreed-Upon Procedures

To the Board of Directors and Management of [_____]:

We have performed the procedures outlined below, which were agreed to by [PRP] (the "Company"), to assist the Company in confirming selected financial data contained in the attached letter from [_____], the Company's Chief Financial Officer, dated [_____], to the Regional Administrator, United States Environmental Protection Agency, Region [___] (the "CFO Letter"). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of the Company's use of a financial test to demonstrate financial assurance for the Company's obligations under that certain Consent Decree (the "Consent Decree"), dated _____, _____, Docket No. [_____], between the Company and EPA. The procedures outlined below were performed solely to assist the Company in complying with the financial assurance requirements contained in the Consent Decree.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of the Company as of and for the fiscal year ended [December 31, 200_] in accordance with U.S. generally accepted accounting principles (such audited, consolidated financial statements, the "Audited Financials"). Our report dated [_____], with respect thereto, is included in the Company's [200_] Annual Report on Form 10-K.
1. Using data set forth in the Audited Financials, we calculated the amount of the Company's total liabilities as of [December 31, 200_] as [\$_____], by [adding total current liabilities of [\$_____] to total non-current liabilities of [\$_____]]. We compared the amount of the Company's total liabilities as so calculated with the amount set forth in Line 6(B) of the CFO Letter ("Total Liabilities"), and found such amounts to be in agreement.
2. Using data set forth in the Audited Financials, we calculated the amount of the Company's tangible net worth as of [December 31, 200_] as [\$_____], by [subtracting the amount of net intangible assets of [\$_____] from the amount of

- total stockholders' equity of [\$_____]). We compared the amount of the Company's tangible net worth as so calculated with the amount set forth in Line 6(C) of the CFO Letter ("Tangible Net Worth"), and found such amounts to be in agreement.
3. We compared the amount of the Company's net worth as of [December 31, 200_], as defined and set forth in the Audited Financials and as calculated therein as [\$_____], with the amount set forth in Line 6(D) of the CFO Letter ("Net Worth"), and found such amounts to be in agreement.
 4. We compared the amount of the Company's total current assets as of [December 31, 200_], as defined and set forth in the Audited Financials and as calculated therein as [\$_____], with the amount set forth in Line 6(E) of the CFO Letter ("Current Assets"), and found such amounts to be in agreement.
 5. We compared the amount of the Company's total current liabilities as of [December 31, 200_], as defined and set forth in the Audited Financials and as calculated therein as [\$_____], with the amount set forth in Line 6(F) of the CFO Letter ("Current Liabilities"), and found such amounts to be in agreement.
 6. Using data set forth in the Audited Financials, we calculated the amount of the Company's net working capital as of [December 31, 200_] as [\$_____], by [subtracting total current liabilities of [\$_____] from total current assets of [\$_____]]. We compared the amount of the Company's net working capital as so calculated with the amount set forth in Line 6(G) of the CFO Letter ("Net Working Capital"), and found such amounts to be in agreement.
 7. Using data set forth in the Audited Financials, we calculated the sum of the Company's net income plus depreciation, depletion, and amortization as of [December 31, 200_] as [\$_____], by [adding depreciation, depletion, and amortization of property and intangibles of [\$_____] to net income of [\$_____]]. We compared the sum of the Company's net income plus depreciation, depletion, and amortization as so calculated with the amount set forth in Line 6(H) of the CFO Letter ("Net Income Plus Depreciation, Depletion, and Amortization"), and found such amounts to be in agreement.
 8. We compared the amount of the Company's total assets located in the United States as of [December 31, 200_] of [\$_____] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) with the amount set forth in Line 6(I) of the CFO Letter, and found such amounts to be in agreement. **OR** We calculated the percentage of Company assets located in the United States as of [December 31, 200_] by dividing the amount of the Company's total assets located in the United States of [\$_____] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) by the amount of the Company's total assets as defined and set forth in the Audited Financials, and found such percentage to be greater than 90%.
 9. Our calculation of the amount of the Company's tangible net worth (as set forth in Line 3 above) is [greater to or equal than] [less than] \$10 million.
 10. The dollar amount identified in Line 6(A) of the CFO Letter is hereinafter referred to as the "Financial Assurance Amount." Our calculation of the amount of the Company's tangible net worth (as set forth in Line 3 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.
 11. Our calculation of the amount of the Company's net working capital (as set forth in Line 7 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.

12. [Complete Line 13 only if less than 90% of Company's assets are located in the United States] Our calculation of the amount of the Company's total assets located in the United States (as set forth in Line 9 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.
13. Our calculation of the amount of the Company's total liabilities (as set forth in Line 2 above) divided by our calculation of the amount of the Company's net worth (as set forth in Line 4 above) is [greater than] [less than] 2.0.
14. Our calculation of the sum of the Company's net income plus depreciation, depletion, and amortization (as set forth in Line 8 above) divided by our calculation of the amount of the Company's total liabilities (as set forth in Line 2 above) is [greater than] [less than] 0.1.
15. Our calculation of the amount of the Company's total current assets (as set forth in Line 5 above) divided by our calculation of the amount of the Company's total current liabilities (as set forth in Line 6 above) is [greater than] [less than] 1.5.

The foregoing agreed-upon procedures do not constitute an audit of the Company's financial statements or any part thereof, the objective of which is the expression of opinion on the financial statements or a part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and Management of the Company and is not intended to be and should not be used by anyone other than these specified parties; provided, however, that we acknowledge and agree that the Company may provide this report to the United States Environmental Protection Agency in support of the Company's financial assurance demonstration under the Consent Decree.

_____ [Signature]

_____ [Name]

_____ [Date]

CERCLA Financial Assurance Financial Test: Sample CPA Report (for Test Alternative 2)

[CPA Letterhead]

Independent Accountants' Report on Applying Agreed-Upon Procedures

To the Board of Directors and Management of [_____]:

We have performed the procedures outlined below, which were agreed to by [PRP] (the "Company"), to assist the Company in confirming selected financial data contained in the attached letter from [_____], the Company's Chief Financial Officer, dated [_____], to the Regional Administrator, United States Environmental Protection Agency, Region [___] (the "CFO Letter"). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of the Company's use of a financial test to demonstrate financial assurance for the Company's obligations under that certain Consent Decree (the "Consent Decree"), dated _____, _____, Docket No. [_____], between the Company and EPA. The procedures outlined below were performed solely to assist the Company in complying with the financial assurance requirements contained in the Consent Decree.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of the Company as of and for the fiscal year ended [December 31, 200_] in accordance with U.S. generally accepted accounting principles (such audited, consolidated financial statements, the "Audited Financials"). Our report dated [_____], with respect thereto, is included in the Company's [200_] Annual Report on Form 10-K.
1. Using data set forth in the Audited Financials, we calculated the amount of the Company's tangible net worth as of [December 31, 200_] as [\$_____], by [subtracting the amount of net intangible assets of [\$_____] from the amount of total stockholders' equity of [\$_____]]. We compared the amount of the Company's tangible net worth as so calculated with the amount set forth in Line 6(C) of the CFO Letter ("Tangible Net Worth"), and found such amounts to be in agreement.
2. We compared the amount of the Company's total assets located in the United States as of [December 31, 200_] of [\$_____] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to

us in writing) with the amount set forth in Line 6(D) of the CFO Letter, and found such amounts to be in agreement. **OR** We calculated the percentage of Company assets located in the United States as of [December 31, 200_] by dividing the amount of the Company's total assets located in the United States of [\$_____] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) by the amount of the Company's total assets as defined and set forth in the Audited Financials, and found such percentage to be greater than 90%.

3. Our calculation of the amount of the Company's tangible net worth (as set forth in Line 2 above) is [greater to or equal than] [less than] \$10 million.
4. The dollar amount identified in Line 6(A) of the CFO Letter is hereinafter referred to as the "Financial Assurance Amount." Our calculation of the amount of the Company's tangible net worth (as set forth in Line 2 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.
5. [Complete Line 6 only if less than 90% of Company's assets are located in the United States] Our calculation of the amount of the Company's total assets located in the United States (as set forth in Line 3 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.

The foregoing agreed-upon procedures do not constitute an audit of the Company's financial statements or any part thereof, the objective of which is the expression of opinion on the financial statements or a part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and Management of the Company and is not intended to be and should not be used by anyone other than these specified parties; provided, however, that we acknowledge and agree that the Company may provide this report to the United States Environmental Protection Agency in support of the Company's financial assurance demonstration under the Consent Decree.

_____ [Signature]

_____ [Name]

_____ [Date]